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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,593	07/02/2003	James G. Wayne	CNVG-007CON2	7246

24353 7590 03/08/2005

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EXAMINER

MENDOZA, MICHAEL G

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 03/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/613,593

Applicant(s)

WHAYNE, JAMES G.

Examiner

Michael G. Mendoza

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 19-76 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 19,21-33,36-58 and 60-76 is/are rejected.
- 7) ☒ Claim(s) 20,34,35 and 59 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 19, 21-30, 41, 42, 45-53, 55-58, 60-69 are rejected under 35

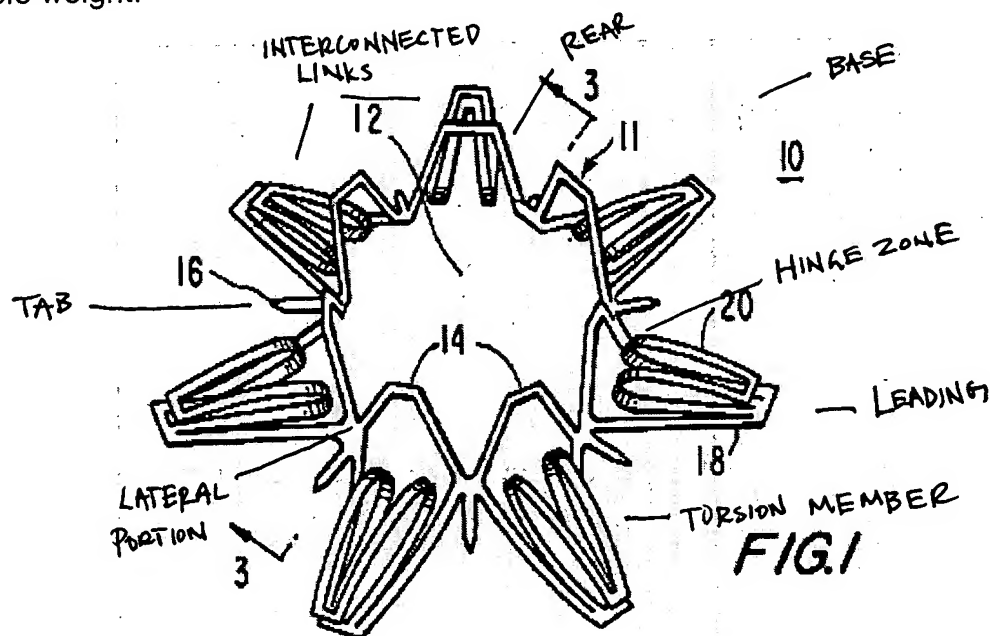
U.S.C. 102(e) as being anticipated by Peterson et al. 6152937.

3. Peterson et al. teaches an anastomosis connector comprising: a base, a leading segment, a rear segment, and a hinge zone associated with the base and comprising a torsion member; at least one lateral portion positioned between the leading segment and the rear segment; wherein the lateral portions are contiguous with the leading segment; wherein the connector is adapted to draw the lateral portion inward relative to the base upon deflecting the rear segment about the hinge zone; wherein the base is fully capable of being compressed to a reduced size; wherein the rear segment is deflectable toward the leading segment; wherein the rear segment is deflectable away from the leading segment; wherein the connector comprises a wireform; wherein the wireform is produced by removing material from the stock selected from a group consisting of tube stock and flat stock (col. 5, line 48-col. 6, line 34); at least one tab adapted to secure a graft to the connector; the connector comprise a biocompatible

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material selected from the group consisting of stainless steel, titanium and titanium alloy; wherein the titanium alloy comprises NiTi (col. 5, lines 33-36); an instrument adapted to deflect the rear segment (figs. 8-13); at least one torsion member is connect to the lateral portions; wherein the hinge zone comprises a pair of torsion members position between the rear segment and the base; at least one torsion member comprises a narrowed section of the base; a plurality of interconnected links having spaces therebetween; at least the leading and rear segment are formed from the interconnected links; at least one lateral portion is formed form the interconnected links.

4. As to claim 30, it has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only require the ability to so perform. It does not constitute a limitation in any patentable sense, and is there for not given any patentable weight.



***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 31-33, 36-40, 43, 44, 54, 70-76 rejected under 35 U.S.C. 103(a) as being unpatentable over Peterson et al. in view of Nash et al. 6402767.

7. Peterson et al. teaches the connector of claim 19. It should be noted that Peterson et al. fails to teach a collar adapted for attachment to the connector.

8. Nash et al. teaches a connector with a common collar for attachment to a connector. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use the collar of Nash et al. to lock the connector in place (col. 9, lines 55-59).

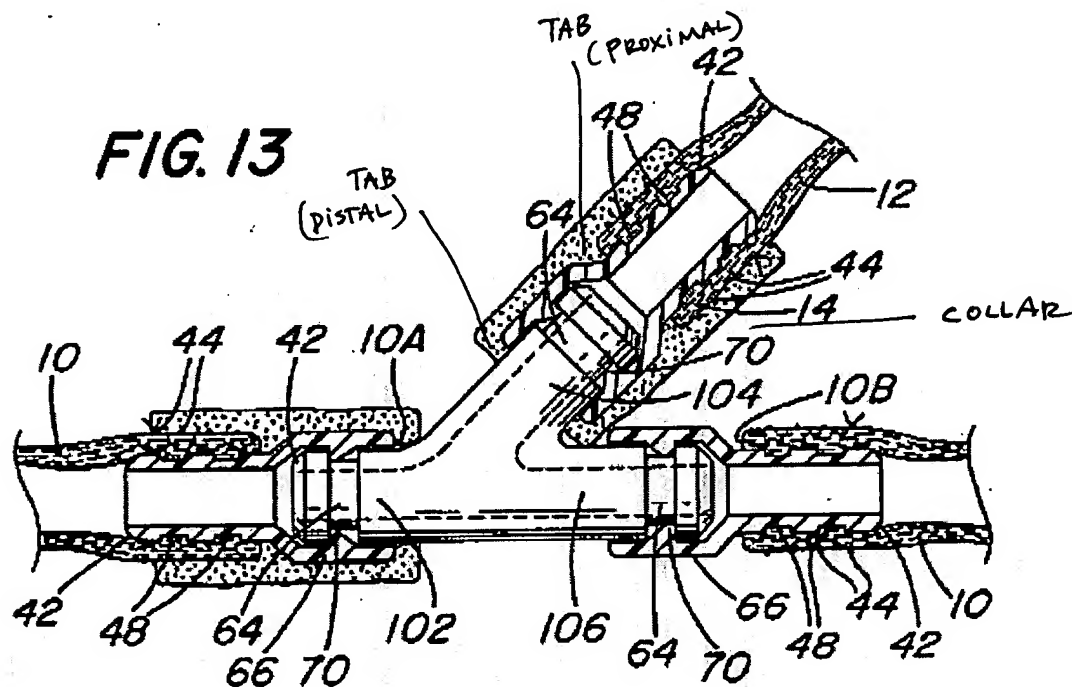
9. Peterson/Nash teaches the connector of claim 31, wherein the collar comprises a split member; a member for interlocking with the connector; at least two lateral portions; wherein the collar is adapted to grasp a graft; wherein the adaptation to grasp a graft comprises a means for grasping a graft; the collar lateral portions interface with the connector lateral portion wherein the collar is operative attached to the connector.

10. As to claim 36 and 37, it has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only require the ability to so perform. It does not constitute a limitation in any patentable sense, and is there for not given any patentable weight.

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11. As to claim 43, Peterson/Nash teaches the connector of claim 31. It should be noted that Nash fails to teach wherein the collar comprises a biocompatible material selected from the group consisting of stainless steel, titanium and titanium alloys.

However, Peterson teaches that it is known to use the claimed materials. Therefore it would have been obvious to one having ordinary skill in the art to use the claimed materials for its biocompatibility.



### ***Allowable Subject Matter***

12. Claims 20, 34, 35, and 59 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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13. The following is a statement of reasons for the indication of allowable subject matter: the prior art of record fails to teach an anastomosis connector comprising: a base; a leading segment; a rear segment; a hinge zone comprising at least one torsion member; and wherein the base defines an angle between a distal end of the graft and the a portion of the host vessel adjacent the connector upon forming an anastomosis, wherein the angle is less than about 90 degrees.

### **Contacts**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael G. Mendoza whose telephone number is (571) 272-4698. The examiner can normally be reached on Mon.-Fri. 8:00 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anh Tuan Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



  
GLENN K. DAWSON  
PRIMARY EXAMINER